

**Comments from Keith Piontek, TRC, Regarding Long-Term Stewardship
Received by MDNR on February 22, 2011, via email**

The following comments pertain to the LTS portion of the proposed rule distributed at the January 26, 2011, Core Group meeting.

Comment No. 1

If DNR is proposing long-term stewardship requirements over and above those required in the 2004 guidance, it would be prudent to assess the proposed requirements in the context of a cost-benefit analysis. Some of the questions that would be addressed in such an analysis would include the following:

- What cases, if any, of exposure to residual contamination have occurred and would have been avoided with the proposed LTS measures?
- If there are insufficient actual cases to support the analysis, what are the conceptual scenarios in which the proposed LTS measures would prevent completion of exposure pathways in the future?
- At what percentage of sites would the proposed LTS measures for enforceable AULs apply?
- At what percentage of sites would the proposed LTS measures for enforceable AULs apply to adjacent properties?
- At what percentage of the adjacent properties will implementation of the enforceable AULs be feasible? At what cost in legal fees, etc.?
- At what percentage of sites will it be necessary to remediate to residential use standards at the property boundary because it was not feasible to implement enforceable AULs on adjacent properties? At what cost?

I realize it may be very difficult to answer these questions in a quantitative way. However, I believe merely discussing the questions and attempting answers would help develop a common understanding among the stakeholder group on the pro's and con's of the proposed LTS measures.

Department Response: The Department agrees that a discussion of the costs and benefits of proposed LTS rule requirements would be beneficial. We also agree that answering the questions quantitatively would be very difficult, as the Department does not track the data needed to answer the questions and is unaware of any other entity tracking such information. As you mention, in lieu of such data, at least discussing conceptual scenarios could prove beneficial.

The Department feels it is premature to discuss LTS costs and benefits in a concentrated fashion as we have not yet established the LTS principles that will guide the LTS rule provisions. Also, please note that the rulemaking process itself requires an accounting of the anticipated costs of compliance with new or amended rule provisions. All stakeholders have an opportunity to provide input regarding the cost estimates during the public comment period of the rulemaking process.

Comment No. 2

Proposed 10 CSR 26-2.081(2)(B)1 should be modified as follows (proposed change in underline). Where concentrations of chemical of concern exceed applicable target levels and reasonably foreseeable and otherwise lawful actions on a property could cause an exposure pathway to become complete (such as the construction of a building or the installation of a water well);

Department response: We agree with the proposed change. If the subject language is retained during the impending rulemaking, the proposed change will be made.

Comment No. 3

Proposed 10 CSR 26-2.081(10) should be modified to make it clear that well location and construction restriction rules may be used as an enforceable LTS measure.

Department response: The Department agrees that the rule should clearly explain that well location and construction restriction rules may be used as an enforceable LTS measure. If the subject language is retained during the impending rulemaking, the language will be changed accordingly.

Comment No. 4

Proposed 10 CSR 26-2.081(11)(A) should be modified as follows (proposed change in underline). If following completion of corrective action activities concentrations of chemical(s) of concern exceed target levels applicable to the groundwater domestic use pathway and the pathway is complete under current or future conditions as determined in accordance with 10 CSR 26-2.075, one or more of the following long-term stewardship measures shall be used... This clarification is requested because there have been instances in the past in which DNR has taken the position that in the absence of an enforceable AUL, the future groundwater pathway is complete, despite the findings of the weight-of-evidence approach embodied in 10 CSR 26-2.075.

Department response: The Department agrees that a reference to 10 CSR 26-2.075 should be included in the rule as proposed. Note that the Department also proposes to include in rule the flowchart regarding evaluation of the groundwater domestic use pathway currently found at Figure 6-2 of the guidance.

Comment No. 5

The proposed LTS language makes frequent use of the term “applicable target levels.” Defining this term would reduce uncertainty as to the intended meaning and consequences. A potential definition is as follows:

Applicable target level: The risk-based target levels corresponding to exposure pathways that are complete under current or reasonably probable future conditions.

Department response: The Department agrees that the rules should include a definition of “applicable target levels” and the rules adopted and subsequently withdrawn by the Hazardous Waste Management Commission in 2009 included a definition. However, upon review, the Department finds the definition in the 2009 adopted/withdrawn rules to be inadequate. Therefore, a new definition similar to that proposed will be incorporated into the future rules.